



U.S. Department of Justice

United States Attorney
Southern District of New York

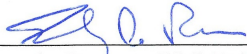
86 Chambers Street
New York, New York 10007

Via ECF

Honorable Edgardo Ramos
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

The parties' requests to both adjourn the initial pretrial conference scheduled for January 13, 2021, and to not require the parties to submit a civil case discovery plan and scheduling order are granted. The parties are directed to provide the Court with a status update regarding Defendants' productions every two months.

It is SO ORDERED.


Edgardo Ramos, U.S.D.J.
Dated: 1/11/2021
New York, New York

Re: *Human Rights Watch v. U.S. Central Command, et al.*, 18 Civ. 11503 (ER)

Dear Judge Ramos:

This Office represents defendants U.S. Central Command ("CENTCOM"), Office of the Secretary of Defense ("OSD"), Office of the Inspector General of the U.S. Department of Defense ("DOD-OIG"), U.S. Department of the Army ("Army"), U.S. Department of the Navy ("Navy"), U.S. Marine Corps ("USMC"), and U.S. Department of the Air Force ("USAF") (together, "Defendants") in the above-referenced case brought by plaintiff Human Rights Watch ("Plaintiff") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

We write respectfully on behalf of all parties in response to the Court's order dated November 23, 2020, *see* Dkt. No. 36. The parties are writing (1) to provide an update to the Court on the status of the case, and (2) to request the cancellation of the conference scheduled for January 13, 2021, at 10:00 a.m.

Because this is an action brought pursuant to FOIA, which in essence seeks review of agency action, the parties respectfully submit that pursuant to Federal Rules of Civil Procedure 26(a)(1)(B)(i) and 26(f), this action is exempt from initial disclosures and the 26(f) conference and report. In addition, the parties understand that pursuant to Local Civil Rule 16.1, this FOIA action is exempt from the requirement of a mandatory scheduling order under Fed. R. Civ. P. 16(b). Accordingly, the parties respectfully request to be relieved from the obligation under the Court's November 23 order to provide a case management plan in this matter, which we understand to be designed to fulfill that requirement. Moreover, the parties respectfully submit that such a scheduling order is unnecessary because the parties expect that this matter, like most FOIA matters, will be resolved either consensually by the parties or through motions for summary judgment without discovery. *See Wood v. FBI*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994).¹

¹ One issue that the Court's Civil Case Management Plan and Scheduling Order addresses that does not relate to a discovery schedule is whether the parties consent to conducting all further proceedings before a U.S. Magistrate Judge. The parties do not so consent.

This is an action under FOIA, seeking the production of documents that Plaintiff requested from Defendants in separate but substantially similar FOIA requests. This action was filed on December 10, 2018. Dkt. No. 1. After a stay occasioned by the lapse in Department of Justice appropriations, Defendants answered the complaint on March 18, 2019.

Since that time, Defendants have conducted searches for records responsive to the FOIA requests and reviewed them for production, with withholdings they deemed appropriate under one or more FOIA exemptions pursuant to 5 U.S.C. § 552(b). The parties have been conferring approximately monthly to discuss the status of Defendants' respective processing and productions and to narrow and focus the scope of the FOIA requests.

The status of the individual agencies is as follows:

- **CENTCOM:** CENTCOM has conducted searches, processed records, and completed its productions.
- **OSD:** OSD has conducted searches and processing and made several interim productions. Approximately 50 pages of records from unclassified record systems and 425 pages of records from classified record systems remain to be processed. OSD expects to make a production of approximately 95 pages of records from classified systems by the end of January, and to complete the processing and production of records from unclassified systems by the end of February. We note that because of the ongoing public health emergency, many OSD personnel are teleworking and cannot access classified record systems remotely. However, OSD will continue processing records and making rolling productions as the public health situation and related staffing limitations permit, and expects to complete processing by the end of June 2021.
- **DOD-OIG:** DOD-OIG has conducted searches, processed records, and completed its productions.
- **Army:** Several Army components have completed their searches for and processing and production of records, including the Army Review Boards Agency, Army Office of the Inspector General, Army Criminal Investigation Command, and Army Office of the Judge Advocate General. Several other Army components conducted searches and did not locate responsive records. Two Army components are still processing records and intend to make productions on a rolling basis: U.S. Army Central, or ARCENT, and the Army Court of Criminal Appeals.
- **Navy and Marines:** Several components of the Navy and Marines, which are responding through the same FOIA office, are in the process of reviewing records for production. The relevant components include the Naval Criminal Investigative Service and the Criminal Law Division, or Code 20; and several commands of the USMC. One other Navy component conducted a search and did not locate responsive records.
- **USAF:** USAF did not locate responsive records.

The parties respectfully propose to provide status updates at 60-day intervals until the review process is complete. At that time, the parties will confer and advise the Court whether further litigation is necessary.

In light of the above, the parties respectfully submit that an initial conference is not necessary at this time, and that the January 13 conference may be adjourned *sine die*. Of course, if the Court prefers, we are prepared to attend the conference as scheduled. If the parties are unable to resolve any dispute that arises in the course of Defendants' responses to Plaintiff's FOIA requests, we will promptly present our respective positions to the Court for resolution.

The parties thank the Court for its consideration of this matter.

Respectfully submitted,

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cc: Counsel of record (via ECF)